

“(e) Nothing contained in Title 35, as enacted by section 1 hereof, shall operate to nullify any judicial finding prior to the effective date of this Act on the validity of any patent by a court of competent jurisdiction.

“(f) Nothing in Title 35, as enacted by section 1 hereof, shall affect any provision of the Atomic Energy Act of 1946 (Aug. 1, 1946, ch. 724, 60 Stat. 755) [§2011 et seq. of Title 42, The Public Health and Welfare].

“(g) The period of one year specified in section 4 of Title 35 as enacted by section 1 hereof shall not apply in the case of applications filed before the effective date of this Act.

“(h) The repeal of sections 1–9, 11, 12 of the Act of Congress approved February 1, 1952 (ch. 4, 66 Stat. 3) [sections 151 to 159 of former Title 35], shall not affect any rights or liabilities existing on the date of approval of this Act [July 19, 1952]. An order of secrecy issued under or in effect under the repealed Act and in effect on the date of approval of this Act, shall be considered as issued under this Act, and any claims arising under the repealed Act or subject to presentation and determination pursuant thereto and unsettled as of the effective date of this Act, may be presented and determined pursuant to the provisions of this Act [this title].”

#### REPEALS

Section 5 of act July 19, 1952, ch. 950, 66 Stat. 815, repealed the sections or parts of sections of the Revised Statutes or Statutes at Large codified in this Act with the proviso that “Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.”

#### TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 11 section 101; title 15 sections 278n, 3703; title 17 sections 912, 1329; title 42 section 12002.

### PART I—PATENT AND TRADEMARK OFFICE

Chap.		Sec.
1.	<b>Establishment, Officers, Functions</b>	<b>1</b>
2.	<b>Proceedings in the Patent and Trademark Office</b> .....	<b>21</b>
3.	<b>Practice before<sup>1</sup> Patent and Trademark Office</b> .....	<b>31</b>
4.	<b>Patent Fees; Funding; Search Systems</b> .....	<b>41</b>

#### AMENDMENTS

1991—Pub. L. 102–204, §5(d)(2)(D), Dec. 10, 1991, 105 Stat. 1640, substituted “before” for “Before the” in chapter 3 heading and inserted “; Funding; Search Systems” after “Fees” in chapter 4 heading.

1975—Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “PATENT AND TRADEMARK OFFICE” for “PATENT OFFICE” in part heading and in headings for chapters 2 and 3.

### CHAPTER 1—ESTABLISHMENT, OFFICERS, FUNCTIONS

Sec.	
1.	Establishment.
2.	Seal.
3.	Officers and employees.
4.	Restrictions on officers and employees as to interest in patents.
[5.	Repealed.]
6.	Duties of Commissioner.
7.	Board of Patent Appeals and Interferences.
8.	Library.
9.	Classification of patents.
10.	Certified copies of records.
11.	Publications.

<sup>1</sup> So in original. Probably should be capitalized.

Sec.	
12.	Exchange of copies of patents with foreign countries.
13.	Copies of patents for public libraries.
14.	Annual report to Congress.

#### AMENDMENTS

1984—Pub. L. 98–622, title II, §201(b), Nov. 8, 1984, 98 Stat. 3386, substituted “Patent Appeals and Interferences” for “Appeals” in item 7.

1972—Pub. L. 92–310, title II, §208(b), June 6, 1972, 86 Stat. 203, struck out item 5 “Bond of Commissioner and other officers”.

#### CROSS REFERENCES

Access to facilities for study, research and illustration in the Patent and Trademark Office, see section 91 of Title 20, Education.

Audit of accounts, see section 3523 of Title 31, Money and Finance.

Constitutional provisions, see Const. Art. 1, §8, cl. 8.

Department of Commerce, jurisdiction and supervision of the Patent and Trademark Office, see section 1511 of Title 15, Commerce and Trade.

Records, books, etc., of Patent and Trademark Office, admissibility of copies as evidence, see section 1744 of Title 28, Judiciary and Judicial Procedure.

### § 1. Establishment

The Patent and Trademark Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trademark registrations shall be kept and preserved, except as otherwise provided by law.

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §1 (R.S. 475 and Executive Order 4175, Mar. 17, 1925).

The word “all” is omitted from the corresponding section of the existing statute and “except as otherwise provided by law” added, since some old records are kept in the National Archives, see 44 U.S.C., 1946 ed., ch. 8A.

The word “models” has been omitted to remove emphasis on models since they are no longer generally required. They are included by the word “things.”

The phrase “and to trademark registrations” is added. There is no enactment corresponding to this section in the trademark law. The original chapter of the Revised Statutes containing this section deals with the Patent Office as such in its administration of trademarks as well as patents. This is explicitly brought out in some of the corresponding sections of the present chapter. Changes in language are made.

#### AMENDMENTS

1975—Pub. L. 93–596 substituted “Patent and Trademark Office” for “Patent Office”.

#### CHANGE OF NAME

Section 3 of Pub. L. 93–596 provided that: “The terms ‘Patent Office’ and ‘Commissioner of Patents’ in all laws of the United States shall mean ‘Patent and Trademark Office’ and ‘Commissioner of Patents and Trademarks’, respectively.”

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105–358, §1, Nov. 10, 1998, 112 Stat. 3272, provided that: “This Act [amending sections 41 and 42 of

this title and enacting provisions set out as a note under section 41 of this title] may be cited as the ‘United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999’.”

Pub. L. 105-289, § 1, Oct. 27, 1998, 112 Stat. 2780, provided that: “This Act [amending section 163 of this title and enacting provisions set out as notes under sections 41 and 163 of this title] may be cited as the ‘Plant Patent Amendments Act of 1998’.”

#### SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-418, § 9001, Aug. 23, 1988, 102 Stat. 1563, provided that: “This subtitle [subtitle A (§§ 9001-9007) of title IX of Pub. L. 100-418, enacting section 295 of this title, amending sections 154, 271, and 287 of this title, and enacting provisions set out as notes under section 271 of this title] may be cited as the ‘Process Patent Amendments Act of 1988’.”

Pub. L. 100-418, title IX, § 9101(a), Aug. 23, 1988, 102 Stat. 1567, provided that: “This section [amending sections 184 to 186 of this title and enacting provisions set out as notes under section 184 of this title] may be cited as the ‘Patent Law Foreign Filing Amendments Act of 1988’.”

#### SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-622, § 1, Nov. 8, 1984, 98 Stat. 3383, provided that: “This Act [enacting section 157 of this title, amending sections 3, 7, 41, 103, 104, 116, 120, 134, 135, 141, 145, 146, 271, 305, 351, 361, 362, 365 to 368, 371 to 373, and 376 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, and sections 2182 and 2457 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 7, 41, 103, 157, and 351 of this title] may be cited as the ‘Patent Law Amendments Act of 1984’.”

#### FEDERAL AGENCY STATUS FOR PATENT AND TRADEMARK OFFICE

Pub. L. 101-508, title X, § 10102, Nov. 5, 1990, 104 Stat. 1388-392, provided that: “For the purposes of Federal law, the Patent and Trademark Office shall be considered a Federal agency. In particular, the Patent and Trademark Office shall be subject to all Federal laws pertaining to the procurement of goods and services that would apply to a Federal agency using appropriated funds, including the Federal Property and Administrative Services Act of 1949 [see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works] and the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.]”

## § 2. Seal

The Patent and Trademark Office shall have a seal with which letters patent, certificates of trade-mark registrations, and papers issued from the Office shall be authenticated.

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 3 (R.S. 478). “Certificates of trade-mark registrations” is added, see note under section 1. Changes in language are made and the specific date eliminated.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### CROSS REFERENCES

Patents issued under seal of Patent and Trademark Office, see section 153 of this title.

## § 3. Officers and employees

(a) There shall be in the Patent and Trademark Office a Commissioner of Patents and Trademarks, a Deputy Commissioner, two Assistant Commissioners, and examiners-in-chief appointed under section 7 of this title. The Deputy Commissioner, or, in the event of a vacancy in that office, the Assistant Commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed and takes office. The Commissioner of Patents and Trademarks, the Deputy Commissioner, and the Assistant Commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law shall appoint all other officers and employees.

(b) The Secretary of Commerce may vest in himself the functions of the Patent and Trademark Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended.<sup>1</sup>

(d) The Commissioner of Patents and Trademarks shall be an Assistant Secretary of Commerce and shall receive compensation at the rate in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(e) The members of the Trademark Trial and Appeal Board of the Patent and Trademark Office shall each be paid at a rate not to exceed the maximum rate of basic pay payable for GS-16 of the General Schedule under section 5332 of title 5.

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 85-933, § 1, Sept. 6, 1958, 72 Stat. 1793; Pub. L. 86-370, § 1(a), Sept. 23, 1959, 73 Stat. 650; Pub. L. 88-426, title III, § 305(26), Aug. 14, 1964, 78 Stat. 425; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-601, § 1, Jan. 2, 1975, 88 Stat. 1956; Pub. L. 97-247, § 4, Aug. 27, 1982, 96 Stat. 319; Pub. L. 97-366, § 4, Oct. 25, 1982, 96 Stat. 1760; Pub. L. 98-622, title IV, § 405, Nov. 8, 1984, 98 Stat. 3392; Pub. L. 105-304, title IV, § 401(a)(1), Oct. 28, 1998, 112 Stat. 2887.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 2 (R.S. 476, amended (1) Feb. 15, 1916, ch. 22, § 1, 39 Stat. 8, (2) Feb. 14, 1927, ch. 139, § 1, 44 Stat. 1098, (3) Apr. 11, 1930, ch. 132, § 1, 46 Stat. 155).

The temporary designation of the assistant commissioner as Commissioner in case of a vacancy in office is added. This will eliminate complications since present applicable general statutes (5 U.S.C., 1946 ed., § 7) permit a vacancy to be temporarily filled only for not more than 30 days.

Changes in language are made. “Assistant commissioners” is used in the second sentence (and elsewhere in the bill) as referring to all three assistants.

<sup>1</sup> See References in Text note below.

This entire title is subject to Reorganization Plan No. 5 of 1950 (64 Stat. 1263) which vests all functions of the Patent Office in the Secretary of Commerce and authorizes delegation by him. It has been found impractical to so word the various sections of the title, and a general provision has been inserted as the second paragraph of this section of the bill, leaving the wording of various sections of the title in terms of officers previously specified and to whom the functions presently stand delegated.

#### REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in subsec. (c), is act Oct. 28, 1949, ch. 782, 63 Stat. 954, as amended, which was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5, Government Organization and Employees.

#### AMENDMENTS

1998—Subsec. (d). Pub. L. 105-304 substituted “in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code” for “prescribed by law for Assistant Secretaries of Commerce”.

1984—Subsec. (e). Pub. L. 98-622 added subsec. (e).

1982—Subsec. (a). Pub. L. 97-247 struck out “not more than fifteen” after “two Assistant Commissioners, and”, and inserted “appointed under section 7 of this title” after “examiners-in-chief”.

Subsec. (d). Pub. L. 97-366 added subsec. (d).

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”, and “Commissioner of Patents and Trademarks” for “Commissioner of Patents”, wherever appearing.

Subsec. (a). Pub. L. 93-601 designated first par. as subsec. (a), redesignated first assistant commissioner as a Deputy Commissioner, granted authority for appointment of not more than fifteen examiners-in-chief to Secretary of Commerce instead of the President, and struck out provision relating to performance by assistant commissioners of duties assigned by Commissioner.

Subsecs. (b), (c). Pub. L. 93-601 designated second and third pars. as subsecs. (b) and (c), respectively.

1964—Pub. L. 88-426 repealed provisions which prescribed annual rate of compensation of Commissioner.

1959—Pub. L. 86-370 authorized Secretary of Commerce to fix compensation of examiners-in-chief.

1958—Pub. L. 85-933 increased number of examiners-in-chief from nine to not more than fifteen and specified annual compensation of Commissioner.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 406(b) of Pub. L. 98-622 provided that: “The amendments made by sections 401, 402, and 405 of this Act [amending this section and sections 361, 366, 371, 372, and 376 of this title] shall take effect six months after the date of the enactment of this Act [Nov. 8, 1984].”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENTS

Section 4(b) of Pub. L. 93-601 provided that: “This Act [amending this section and sections 7 and 151 of this title and enacting provisions set out as a note under section 151 of this title] shall be effective upon enactment [Jan. 2, 1975]. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments.”

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on first day of first pay period which begins on or after July 1, 1964,

except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Section 7(b) of Pub. L. 86-370 provided that: “Sections 1 [amending this section, section 7 of this title, and provisions set out as a note below], 3 [amending sections 2205 and 2208 of former Title 5, Executive Departments and Government Officers and Employees], and 6 [amending section 1082 of former Title 5 and section 903 of Title 20, Education] of this Act shall become effective on the first day of the first pay period which begins after the date of enactment of this Act [Sept. 23, 1959].” Such section 7(b) was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 660.

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

#### EXISTING POSITIONS, COMPENSATION, AND APPOINTMENTS UNAFFECTED BY PUB. L. 86-370 UNTIL ACTION TAKEN UNDER AMENDMENTS

Section 1(c) of Pub. L. 86-370 provided that: “The amendments made by this section [amending sections 1 and 7 of this title] shall not affect—

“(1) any position of examiner-in-chief or designated examiner-in-chief existing immediately prior to the effective date of this section [see Effective Date of 1959 Amendment note set out above], or

“(2) any incumbent of any such position, his appointment thereto, his rate of compensation, or his right to receive such compensation, until appropriate action is taken under authority of such amendments.”

#### CROSS REFERENCES

Classification and compensation of civil service employees, see section 5101 et seq. of Title 5, Government Organization and Employees.

Compensation of Commissioner, see section 5316 of Title 5.

Employment of clerks and employees in governmental departments, see section 3101 of Title 5.

#### § 4. Restrictions on officers and employees as to interest in patents

Officers and employees of the Patent and Trademark Office shall be incapable, during the period of their appointments and for one year thereafter, of applying for a patent and of acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or interest in any patent, issued or to be issued by the Office. In patents applied for thereafter they shall not be entitled to any priority date earlier than one year after the termination of their appointment.

(July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 4 (R.S. 480).

The language is revised and inability to apply for a patent, included in the original language, is made explicit.

The period of disability is increased to include one year after leaving the Office.

The further restriction, that no priority date earlier than one year after leaving the Office can be claimed, is added.

The one year period is made inapplicable to applications which may be pending when the revised title goes into effect by section 4(g) of the bill.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### [§ 5. Repealed. Pub. L. 92-310, title II, § 208(a), June 6, 1972, 86 Stat. 203]

Section, act July 19, 1952, ch. 950, 66 Stat. 793, related to bond of Commissioner and other officers.

#### § 6. Duties of Commissioner

(a) The Commissioner, under the direction of the Secretary of Commerce, shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trademarks; shall have the authority to carry on studies, programs, or exchanges of items or services regarding domestic and international patent and trademark law or the administration of the Patent and Trademark Office, including programs to recognize, identify, assess and forecast the technology of patented inventions and their utility to industry; and shall have charge of property belonging to the Patent and Trademark Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office.

(b) The Commissioner, under the direction of the Secretary of Commerce, may, in coordination with the Department of State, carry on programs and studies cooperatively with foreign patent offices and international intergovernmental organizations, or may authorize such programs and studies to be carried on, in connection with the performance of duties stated in subsection (a) of this section.

(c) The Commissioner, under the direction of the Secretary of Commerce, may, with the concurrence of the Secretary of State, transfer funds appropriated to the Patent and Trademark Office, not to exceed \$100,000 in any year, to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and related matters. These special payments may be in addition to any other payments or contributions to the international organization and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the Government of the United States.

(July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 92-132, Oct. 5, 1971, 85 Stat. 364; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94-131, § 2, Nov. 14, 1975, 89 Stat. 690; Pub. L. 97-247, §§ 7, 13, Aug. 27, 1982, 96 Stat. 320, 321; Pub. L. 102-204, § 8, Dec. 10, 1991, 105 Stat. 1641.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 6 (R.S. 481 and 483).

The two sections are combined into one with some changes in language.

“And the registration of trademarks” is added, see note under section 1.

#### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-204 substituted “, including programs to recognize, identify, assess and forecast the technology of patented inventions and their utility to industry; and shall have” for “; and shall have”.

1982—Subsec. (a). Pub. L. 97-247, § 13, substituted “, programs, or exchanges of items or services” for “and programs” before “regarding domestic”, and inserted “or the administration of the Patent and Trademark Office” after “trademark law”.

Subsec. (d). Pub. L. 97-247, § 7, struck out subsec. (d) which provided that the Commissioner, under the direction of the Secretary of Commerce, could, with the concurrence of the Secretary of State, allocate funds appropriated to the Patent Office, to the Department of State for the purpose of payment of the share on the part of the United States to the working capital fund established under the Patent Cooperation Treaty and that contributions to cover the share on the part of the United States of any operating deficits of the International Bureau under the Patent Cooperation Treaty would be included in the annual budget of the Patent Office and could be transferred by the Commissioner, under the direction of the Secretary of Commerce, to the Department of State for the purpose of making payments thereof to the International Bureau.

1975—Subsecs. (a), (c). Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office” wherever appearing.

Subsec. (d). Pub. L. 94-131 added subsec. (d).

1971—Subsec. (a). Pub. L. 92-132 designated existing par. as subsec. (a) and authorized the Commissioner, under direction of Secretary of Commerce, to carry on studies and programs regarding domestic and international patent and trademark laws.

Subsecs. (b), (c). Pub. L. 92-132 added subsecs. (b) and (c).

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 94-131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### USE OF EXCHANGE AGREEMENTS RELATING TO AUTOMATIC DATA PROCESSING RESOURCES PROHIBITED

Pub. L. 102-204, § 6, Dec. 10, 1991, 105 Stat. 1641, provided that: “The Commissioner of Patents and Trademarks may not, during fiscal year 1992, enter into any agreement for the exchange of items or services (as authorized under section 6(a) of title 35, United States Code) relating to automatic data processing resources (including hardware, software and related services, and machine readable data). The preceding sentence shall not apply to an agreement relating to data for automation programs which is entered into with a foreign government or with an international intergovernmental organization.”

Similar provisions were contained in the following prior authorization acts:

Pub. L. 100-703, title I, § 106, Nov. 19, 1988, 102 Stat. 4675.

Pub. L. 99-607, § 6, Nov. 6, 1986, 100 Stat. 3472.

## § 7. Board of Patent Appeals and Interferences

(a) The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed to the competitive service. The Commissioner, the Deputy Commissioner, the Assistant Commissioners, and the examiners-in-chief shall constitute the Board of Patent Appeals and Interferences.

(b) The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title. Each appeal and interference shall be heard by at least three members of the Board of Patent Appeals and Interferences, who shall be designated by the Commissioner. Only the Board of Patent Appeals and Interferences has the authority to grant rehearings.

(c) Whenever the Commissioner considers it necessary, in order to keep current the work of the Board of Patent Appeals and Interferences, the Commissioner may designate any patent examiner of the primary examiner grade or higher, having the requisite ability, to serve as examiner-in-chief for periods not exceeding six months each. An examiner so designated shall be qualified to act as a member of the Board of Patent Appeals and Interferences. Not more than one of the members of the Board of Patent Appeals and Interferences hearing an appeal or determining an interference may be an examiner so designated. The Secretary of Commerce is authorized to fix the pay of each designated examiner-in-chief in the Patent and Trademark Office at not to exceed the maximum rate of basic pay payable for grade GS-16 of the General Schedule under section 5332 of title 5. The rate of basic pay of each individual designated examiner-in-chief shall be adjusted, at the close of the period for which that individual was designated to act as examiner-in-chief, to the rate of basic pay which that individual would have been receiving at the close of such period if such designation had not been made.

(July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 85-933, § 2, Sept. 6, 1958, 72 Stat. 1793; Pub. L. 86-370, § 1(b), Sept. 23, 1959, 73 Stat. 650; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-601, § 2, Jan. 2, 1975, 88 Stat. 1956; Pub. L. 98-622, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3386.)

### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 7 (R.S. 482, amended (1) Mar. 2, 1927, ch. 273, § 3, 44 Stat. 1335, (2) April 11, 1930, ch. 132, § 2, 46 Stat. 155, (3) Mar. 4, 1950, ch. 50, 64 Stat. 11).

Some changes in language have been made and the reference to interferences, which are no longer considered by the Board of Appeals, has been deleted. Reference to reissues is omitted in view of the general provision in section 251.

### AMENDMENTS

1984—Pub. L. 98-622 substituted “Board of Patent Appeals and Interferences” for “Board of Patent Appeals” as section catchline.

Subsec. (a). Pub. L. 98-622 designated first two sentences of existing first paragraph as subsec. (a) and substituted “competitive service” for “classified civil service” at end of first sentence, capitalized “Deputy

Commissioner” and “Assistant Commissioner” and further substituted “the Board of Patent Appeals and Interferences” for “a Board of Appeals, which on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents”.

Subsec. (b). Pub. L. 98-622 designated final two sentences of existing first paragraph as subsec. (b) and inserted first sentence, substituted “Board of Patent Appeals and Interferences” for “Board of Patent Appeals” in two places and further substituted “authority” for “sole power” before “to grant rehearings” in third sentence.

Subsec. (c). Pub. L. 98-622 designated existing second paragraph as subsec. (c) and substituted “Board of Patent Appeals and Interferences” for “Board of Patent Appeals” wherever appearing, inserted “or determining an interference” before “may be an examiner so designated”, substituted “maximum rate of basic pay payable for grade GS-16 of the General Schedule under section 5332 of title 5” for “maximum scheduled rate provided for positions in grade 16 of the General Schedule of the Classification Act of 1949, as amended”, and substituted “rate of basic pay” for “per annum rate of basic compensation” in two places.

1975—Pub. L. 93-601 inserted provisions relating to appointment of the examiners-in-chief under classified civil service, and addition of deputy commissioner to Board of Appeals.

Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

1959—Pub. L. 86-370 authorized Secretary of Commerce to fix compensation of designated examiners-in-chief at rates not higher than maximum rate for grade 16 of General Schedule.

1958—Pub. L. 85-933 permitted temporary designees to be paid salary received by permanent examiners-in-chief while so serving and provided for compensation adjustments in their regular classifications following such service.

### EFFECTIVE DATE OF 1984 AMENDMENT

Section 207 of title II of Pub. L. 98-622 provided that: “Section 206 of this Act [set out as a note below] and the amendments made by this title [amending this section, sections 41, 134, 135, 141, 145, 146, and 305 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, and sections 2182 and 2457 of Title 42, The Public Health and Welfare] shall take effect three months after the date of the enactment of this Act [Nov. 8, 1984].”

### EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93-601 effective Jan. 2, 1975, with examiners-in-chief in office on such date to continue with existing appointment, see section 4(b) of Pub. L. 93-601, set out as a note under section 3 of this title.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-370 effective on first day of first pay period which begins after Sept. 23, 1959, see section 7(b) of Pub. L. 86-370, set out as a note under section 3 of this title.

### SAVINGS PROVISION

Section 206 of title II of Pub. L. 98-622 provided that: “Any individual who, on the effective date of this title [see Effective Date of 1984 Amendment note above], is an examiner-in-chief of the Board of Patent Appeals of the Patent and Trademark Office or an examiner of interferences of the Board of Patent Interferences of such office shall be entitled to continue in office as a member of the Board of Patent Appeals and Interferences of the Patent and Trademark Office as of such effective date.”

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

#### EXISTING POSITIONS

Existing positions, compensation, and appointments unaffected by amendment by Pub. L. 86-370 until action is taken under such amendment, see note set out under section 3 of this title.

#### CROSS REFERENCES

Appeal to Board of Appeals, see section 134 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3 of this title.

### § 8. Library

The Commissioner shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Patent and Trademark Office to aid the officers in the discharge of their duties.

(July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 10 (R.S. 486).

Some change in language has been made. "Purchased" is changed to "maintained" to include the existing library and keeping it up by additions. The phrase "and other" is added to include legal works. The last phrase of the corresponding section of the existing statute is omitted as unnecessary.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### FEES FOR USE OF SEARCH ROOMS AND LIBRARIES PROHIBITED

For provisions prohibiting Commissioner of Patents and Trademarks from imposing fee for use of public patent or trademark search rooms and libraries, and providing that costs of such rooms and libraries come from amounts appropriated by Congress, see section 4 of Pub. L. 99-607, set out as a note under section 41 of this title.

#### CROSS REFERENCES

Library of Patent and Trademark Office, binding of books, see section 501 of Title 44, Public Printing and Documents.

### § 9. Classification of patents

The Commissioner may revise and maintain the classification by subject matter of United States letters patent, and such other patents and printed publications as may be necessary or practicable, for the purpose of determining with readiness and accuracy the novelty of inventions for which applications for patent are filed.

(July 19, 1952, ch. 950, 66 Stat. 794.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 6 note (June 10, 1898, ch. 430, § 1, 30 Stat. 440).

Changes in language are made.

### § 10. Certified copies of records

The Commissioner may furnish certified copies of specifications and drawings of patents issued by the Patent and Trademark Office, and of other records available either to the public or to the person applying therefor.

(July 19, 1952, ch. 950, 66 Stat. 794; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 14 (Mar. 3, 1891, ch. 541, § 1 (part), 26 Stat. 908, 940).

Reference to other records is added. The fee for certification is omitted as it appears in the table of fees.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### CROSS REFERENCES

Fees for certified copies, see section 41 of this title.

### § 11. Publications

(a) The Commissioner may print, or cause to be printed, the following:

1. Patents, including specifications and drawings, together with copies of the same. The Patent and Trademark Office may print the headings of the drawings for patents for the purpose of photolithography.

2. Certificates of trade-mark registrations, including statements and drawings, together with copies of the same.

3. The Official Gazette of the United States Patent and Trademark Office.

4. Annual indexes of patents and patentees, and of trade-marks and registrants.

5. Annual volumes of decisions in patent and trade-mark cases.

6. Pamphlet copies of the patent laws and rules of practice, laws and rules relating to trade-marks, and circulars or other publications relating to the business of the Office.

(b) The Commissioner may exchange any of the publications specified in items 3, 4, 5, and 6 of subsection (a) of this section for publications desirable for the use of the Patent and Trademark Office.

(July 19, 1952, ch. 950, 66 Stat. 794; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§ 13 and 16 (R.S. 489; July 9, 1947, ch. 211, § 301 (part), 61 Stat. 299, repeated in prior and subsequent appropriation acts).

Section is amplified to list the publications of the Patent Office, based on 44 U.S.C., 1946 ed., §§ 283, 283a.

The second sentence of item 1 of the revised section is a provision appearing annually in appropriation acts to enable the Patent Office to maintain a small printing press to place headings on drawings before the drawings are reproduced.

Language is changed.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”, wherever appearing.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### CROSS REFERENCES

Exchange of Official Gazette for scientific or useful publications, see section 481 of Title 40, Public Buildings, Property, and Works.

Printing and publications for Patent and Trademark Office, see sections 1337, 1338 of Title 44, Public Printing and Documents.

### § 12. Exchange of copies of patents with foreign countries

The Commissioner may exchange copies of specifications and drawings of United States patents for those of foreign countries.

(July 19, 1952, ch. 950, 66 Stat. 794.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§15, and 78, part (Jan. 14, 1915, 38 Stat. 1221; Feb. 18, 1922, ch. 58, §9, proviso in, 42 Stat. 393).

The first act mentioned applies to Canada only, the second to any country; these are consolidated in one section, specific reference to one country not being necessary.

Language is changed.

### § 13. Copies of patents for public libraries

The Commissioner may supply printed copies of specifications and drawings of patents to public libraries in the United States which shall maintain such copies for the use of the public, at the rate for each year's issue established for this purpose in section 41(d) of this title.

(July 19, 1952, ch. 950, 66 Stat. 794; Pub. L. 97-247, §15, Aug. 27, 1982, 96 Stat. 321.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §78, part (R.S. 4934, Feb. 18, 1922, ch. 58, §9, 42 Stat. 389, 393, amended June 15, 1950, ch. 249, 64 Stat. 215).

The proviso in the schedule of fees of the existing statute is made a separate section and some changes in language are made.

#### AMENDMENTS

1982—Pub. L. 97-247 substituted “section 41(d)” for “section 41(a)9”.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41 of this title.

### § 14. Annual report to Congress

The Commissioner shall report to Congress annually the moneys received and expended, statistics concerning the work of the Office, and other information relating to the Office as may be useful to the Congress or the public.

(July 19, 1952, ch. 950, 66 Stat. 794.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §20 (R.S. 494).

Language is changed. The lists referred to in the corresponding section of existing statute, and which are omitted from the revised section, are the indexes provided for in section 11(a)4. The month of reporting is omitted. The report contemplated by R.S. 494 has been discontinued since 1925 under authority of 44 U.S.C., 1946 ed., §212.

#### REPORT TO CONGRESS

Pub. L. 100-703, title I, §103(c), Nov. 19, 1988, 102 Stat. 4674, provided that: “The Secretary of Commerce shall, on the day on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

“(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

“(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

“(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

“(4) any proposed disposition of surplus fees by the Office; and

“(5) such other information as the committees consider necessary.”

Similar provisions were contained in the following prior authorization act:

Pub. L. 99-607, §3(c), Nov. 6, 1986, 100 Stat. 3471.

#### COMPUTERIZED DATA AND RETRIEVAL SYSTEM; REPORT TO CONGRESS

Pub. L. 96-517, §9, Dec. 12, 1980, 94 Stat. 3028, directed the Commissioner of Patents and Trademarks to report to Congress, within two years after Dec. 12, 1980, a plan to identify, and if necessary develop or have developed, computerized data and retrieval systems equivalent to the latest state of the art which could be applied to all aspects of the operation of the Patent and Trademark Office, and particularly to the patent search file, the patent classification system, and the trademark search file. The report was to specify the cost of implementing the plan, and how rapidly the plan could be implemented by the Patent and Trademark Office, without regard to the availability of future funding.

#### CROSS REFERENCES

Printing and distribution of the report of the Commissioner, see section 1337 of Title 44, Public Printing and Documents.

Provisions applicable to all the Departments, relating to the time of making annual reports, see section 2952 of Title 5, Government Organization and Employees.

### CHAPTER 2—PROCEEDINGS IN THE PATENT AND TRADEMARK OFFICE

Sec.

21. Day for taking action falling on Saturday, Sunday, or holiday.<sup>1</sup>
22. Printing of papers filed.
23. Testimony in Patent and Trademark Office cases.
24. Subpoenas, witnesses.
25. Declaration in lieu of oath.
26. Effect of defective execution.

#### AMENDMENTS

1975—Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “Patent and Trademark Office” for “Patent Office” in chapter heading and in item 23.

<sup>1</sup>Section catchline amended by Pub. L. 97-247 without corresponding amendment of chapter analysis.